

ORIGINAL

Before the
Federal Communications Commission
Washington DC 20554

Attn : Secretary FCC
Docket 05-210

DEC 23 2005
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Comments

The Federal Communication Commission has requested comments seeking to streamline FM Table Of Allotment Rulemaking and AM Community Of License Procedures.

The action : " initiates substantial review and potential reforms of these procedures. The proposals are intended to streamline these procedures, facilitate the expeditious licensing of proposals that advance the fair, equitable, and efficient distribution of radio services, and reduce current backlogs."

The fundamental flaw in this proceeding is the lack of notice to "The Public" in this matter and it is probable " The Public" will have no input on the matter.

The other fundamental flaw is that the majority of the comments will come from lawyers representing large corporations who are currently using the Rulemaking Proceeding to remove radio stations from small towns and relocate them to other towns which already have "service" from many radio stations.

In so much as "The Public has largely been removed from the process this aspect of service is addressed in the form of "Comments" submitted herein.

Discussion

In streamlining the FM Rulemaking process the Commission should apply the same Rules to educational and commercial stations and simply apply the same Rules which are currently in place for Non Commercial stations. Removing the "Table Of Allotments" and requiring a Rulemaking each time a commercial station makes a change would allow the world of educational FM and changes made within the educational FM realm to be the model for commercial frequency and City Of License changes.

The NPRM seeks **Comment on Circumstances Under Which Sole Local Service Could Become a First Local Service Elsewhere** – Asks whether this policy should be relaxed and, if so, what standards should be applied in allowing such station relocation.

The nature of the moves in recent years has been to leave small towns without radio service in favor of small towns within large urbanized areas. The nature of the moves requires a "tuck showing" to show the small towns near Chicago and other large cities "exist" but fails to examine the cost of the move when a small town is left without a radio

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station. "The Public" is left out of such moves because "The Public" is not notified by the local radio station the move will take place and Commission Rules are set to favor lawyers and large corporations with cash to fight a sustained battle.

In opposition to the Communications Act as amended and the ideals of "The Public and Broadcasting" the Public rarely views local "Public Inspection Files" and there is lacksadaisical Commission interest when "The Public" is unable to view the "Public Inspection File." The system has been reworked to favor broadcasters and lawyers and not "The Public."

Recent renewals of stations in Indiana are indicative of the Commission's failure to listen to "The Public." As local service is discussed this example is relevant. Many stations received renewals that ; 1) failed to operate minimum hours; 2) were cited as having their Public Inspection Files unavailable; 3) misrepresentation; 4) failure of a Licensee in the act of submitting or signing, or reviewing their License renewal applications; 5) non certification of Anti Drug Abuse forms required by Congress; and 6) The renewals were ruled improper by the Indiana State Board Of Accounts who oversees each entity.

Stations WBDG Indianapolis, WHJE Carmel, WRFT Indianapolis, WPSR Evansville, and others renewed their Licenses without the involvement of the Licensees of the stations. The Indiana State Board Of Accounts Chief Examiner indicated the renewals violated State law as they were not presented to the governing boards and the people signing the renewals were not allowed by Law to do so.

Commission Staff has not addressed the clear statements from the Board Of Accounts and fails to indicate in any discussion what reason they found to renew the Licenses.

Because a member of "The Public" commented and asked to share time with the stations not operating minimum hours the stations have evidenced a threat to sue a member of "The Public" because a member of "The Public" made comments in each renewal. WRFT Indianapolis has sent an extortion letter demanding cash to pay a DC lawyer who represented them when a contract engineer filed, reviewed and submitted their License application with his name and his position as technical consultant.

Clearly the groups were able to walk around the Rules and any comment from "The Public" because the system has been backwards engineered from the early days of radio and the intent of the Communications Act. It isn't about "The Public" at all, it is about how someone with enough money can bypass "Rules" and obtain the desired outcome. The Indiana License renewals are clear indications of this.

If the Commission expects "The Public" to take it seriously it needs to take "The Public" seriously. If "The Public" no longer has a place in proceedings just tell them their input is unimportant. Remove the Public Inspection File requirements. Remove The Public and Broadcasting requirements. A throwback to a different time is no longer relevant in today's industry and is of no importance in the decision making process.

If there is a place for these items and "The Public" is to be considered, "The Public Interest, Convenience, and Necessity" should be considered.

Many Rulemaking Petitions are clearly indicative of what the industry is doing to change the face of radio. Clear Channel changed City Of License of an expanded band AM service from a small Illinois town to a town next to Chicago. RM 11113 and RM 11114 have proposed removing the only FM service from Connersville, Indiana to Norwood Ohio next to Cincinnati.

In opposition to these moves, a move by Shirk Incorporated (now Radio One Inc) moved Lebanon Indiana's sole service to Speedway, Indiana. Prior to the move the station worked with locals to find a non commercial frequency and place it on air in Lebanon Indiana.

Most stations in the past who desired to leave their city relocate to another city which is near their City Of License. Today, Licensees need to move more than the 44 miles a Class C City Of License 70dbu signal would allow. Moves out of geographic regions and States are becoming increasingly common.

The Commission should:

Establish notification procedures for Licensees leaving their current cities without service:

- 1) **Require copies of certified letters from broadcasters to the current City officials of each city which is losing service.** Much like any reasonable person is required to do when making changes to their property in the form of a building permit this would place notification issues and responsibilities with the Licensee who wishes to move. Let them make the explanation to "The Public" first and then to The Commission.
- 2) **Require letters to a percentage of the population in the city which is losing service.** The responsibility is then placed with the broadcaster. Newspaper ads in the legal section are largely unread and newspaper notification is not notice to the regular public.

Make allowances for cities that lose service in the following means:

- 1) **Establish class A status for FM translators** that would make the Rules between TV and FM identical. Allow the FM translators to provide local service.

The precedent is the Class D FM service which was allowed the ability to become a Class A facility. Many of the Class D FM stations still exist.

- 2) **Allow FM translators to upgrade to Class A, B, or C facilities on a first come first served basis** so that in the months or years it might take to place a new FM in Connersville, Indiana or another city which loses its only FM service. As each Licensee goes through the same procedure to obtain the "privilege" of being on the air, allowing lower class or unprotected stations to upgrade when a local broadcaster leaves a city

without service seems fair and equitable.

3) Require broadcasters leaving a city with no service to make an attempt to find replacement service. Require that each conduct a channel search, contact translator operators, and be required to work with (not against new service) in their city to alleviate the negative impact on the current city of license.

The Commission should require these actions of all Licensees leaving one community for another and allow "The Public" to comment in both new and existing proceedings where "The Public" has been largely left out of moves which affect the local economy and business.

Permitting Community of License Minor Change Applications – Proposes to allow AM and FM licensees and permittees to change their community of license by first-come/first-served minor modification applications, streamlining the current two-step procedures.

As long as "The Public" has safeguards which would protect local service as previously proposed, Minor Change Applications for City of License Changes would place more responsibility on the License and not The Commission.

Requiring Simultaneous Filing of Form 301 with Petitions to Add New FM Allotments – Proposes to require filing Form 301, and paying the required filing fee, with all petitions to add new FM allotments to the Table. This will help ensure that parties who value new allotments most – those who participate in broadcast auctions – will be the ones seeking to add new FM allotments.

The Commission should exclude Non Commercial applicants from fees and provide priority for Non Commercial Applicants who apply for first come first served allocations.

The Commission should not place more value on auction money in opposition to new service by Non Commercial Applicants. The same side of this would indicate that each Non Commercial entity operate any station for a 3 year period to reduce trafficking of Licenses.

Limiting the Number of Modifications to the Table in One Proceeding – Proposes to limit the number of modifications to the Table proposed by any one party to five, absent compelling public interest reasons.

Limiting the number of modifications in one proceeding would by nature limit Counterproposals or require further MXed resolution measures and would not be in the Commission's interest. If a proposal has 4 modifications and 3 other Licensees file a counter proposal how does staff decide which has more merit?

In the Proceeding the Commission should also apply the 90 day settlement to existing MXed groups of applicants which have been shelved for years with no apparent winner. Including the Non Commercial MXed groups and MXed time share applications which

currently exist or are in review or any stage of Reconsideration..

The Commission should allow waiver of specific Rules to allow settlements including :
1) Allow changes in City Of License and contour overlap; 2) Allow contour protection to bring settlements about; and 3) Allow these changes within the 90 day window. This specific change would allow resolution of many current Mxed situations.

Hensley Streamlining Proposal

The Commission is considering streamlining the Rulemaking process and currently has an existing model which has worked well in the form of the NCE service.

Streamlining Fm Rules to be compliant and simialr to TV Rules as for Class A Status for translators and otehr changes which are in the Public Interest the Proposal is outlined:

1) The Commission should apply the same Rules to commercial stations which are currently in place for Non Commercial (NCE) stations. Removing the "Table Of Allotments" would allow the world of educational FM and changes made within the educational FM realm to be the model for commercial frequency and City Of License changes. This would not be a major change and would implement practices and procedures which are now in place.

This requires filing of a form 301 with each change and would limit large moves because the filings would be individual. The Commission could exclude "contingent applications" filed without a waiver request. By nature this action would limit multiple moves.

2) Establish notification procedures for Licensees leaving their current cities without service:

a) Require copies of certified letters from broadcasters to the current City officials of each city which is loosing service. Much like any reasonable person is required to do when making changes to their property in the form of a building permit this would place notification issus and responsibilities with the Licensee who wishes to move. Let Licensees make the explanation to "The Public" first and then to The Commission.

b) Require letters to a percentage of the population in the city which is loosing service. The responsibility is then placed with the broadcaster. Newspaper ads in the legal section are largely unread and newspaper notification is not notice to the regular public.

3) Make allowances for cities that loose service as follows:

a) Establish class A status for FM translators that would make the Rules between TV and FM identical. Allow the FM translators to provide local service. The precedent is the Class D FM service which was allowed the ability to become a Class A facility. Many fo the Class D FM stations still exist.

b) **Allow FM translators to upgrade to Class A, B, or C facilities on a first come first served basis** so that in the months or years it might take to place a new FM in Connersville, Indiana or another city which loses its only FM service. As each Licensee goes through the same procedure to obtain the "privilege" of being on the air, allowing lower class or unprotected stations to upgrade when a local broadcaster leaves a city without service seems fair and equitable.

c) **Require broadcasters leaving a city with no service to make an attempt to find replacement service.** Require that each conduct a channel search, contact translator operators, and be required to work with (not against new service) in their city to alleviate the negative impact on the current city of license.

d) allowing broadcasters a "credit" for replacing service would further assist small communities when it comes to maintaining service.

--The Commission should require these actions of all Licensees leaving one community for another and allow "The Public" to comment in both new and existing proceedings where "The Public" has been largely left out of moves which affect "The Public" the local economy and business.

4) **In the Proceeding the Commission should also apply the 90 day settlement to existing MXed groups of applicants which have been shelved for years with no apparent grant in sight. Including the Non Commercial MXed groups and MXed time share applications which currently exist or are in review or any stage of Reconsideration.**

The Commission should allow waiver of specific Rules to allow settlements including : 1) Allow changes in City Of License and not require contour overlap of settled applications versus filed applications; 2) Allow contour protection to bring settlements about where new frequencies are required; Require 60dbu City coverage for MXed applications; and 3) Allow these changes within the 90 day settlement window which has been advanced as a part of this Proceeding. This specific change would allow resolution of many current MXed situations.

5) **The Commission should exclude Non Commercial applicants from fees and provide priority for Non Commercial Applicants who apply for first come first served allocations.**

The Commission should not place more value on auction money in opposition to new service by Non Commercial Applicants. *The proposal would advance that each Non Commercial entity operate any station for a 3 year period to reduce trafficking of Licenses.*

Respectfully submitted this 17th day of June 2005

Martin L. Bentley Pro Se

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Declaration

I am Martin Hensley. I have submitted Comments on behalf of The Public. I affirm under penalty of perjury that the statements herein to be true and correct.

A handwritten signature in black ink, appearing to read 'M. Hensley', with a large, stylized loop at the end.